



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3879 OF 2023
IN
CRIMINAL APPEAL NO. 999 OF 2023

Siddharth Ashok Tupe
Age. 28 Years, Occu. Agri.,
Vo. Malunja, Tq. Gangapur,
Dist. Aurangabad

... Applicant.

Versus

1. The State of Maharashtra

2. X.Y.Z.

... Respondents.

...
Mr. Satej S. Jadhav, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent – State
Ms. Tejshree K. Nalawade, Advocate for Respondent No.2

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 8th JANUARY, 2024

PRONOUNCED ON : 12th JANUARY, 2024

ORDER :

1. This is an application for suspension of sentence and grant of bail during pendency of appeal arising out of judgment and order passed by learned Special Judge/Sessions Judge, Vaijapur, District Aurangabad dated 04.10.2023 in Special Case (Child Protection) No.01 of 2018, by which applicant is sentenced to suffer rigorous imprisonment for 10 years and 06 months, respectively, for commission of offence under sections 376(n) and 506 of Indian Penal Code (IPC).

2. It is submitted that, the applicant was held guilty for above charges. According to him, prosecution could not prove the age of the victim. There is theory of consent. That, victim was in the company of accused for almost six day. Evidence suggests that, she had herself left the house and therefore, applicant was acquitted from charges under sections 363 and 366 of IPC as well as provisions of the Protection of Children from Sexual Offences Act. That, out of 10 years of imprisonment, applicant has already undergone 6 years imprisonment. The appeal is having good grounds and is pending herein. Hence, he prays for suspension of sentence and grant of bail.

3. Learned APP opposed the application on the ground that, offence is serious. There are allegations of forceful sexual intercourse. Medical evidence has also confirms the same. Therefore, applicant having been convicted for grave offence, is not entitled for relief as prayed for.

4. Learned counsel for victim also supported the conviction and would submit that, victim is established to be a minor. The Principal of the school where victim studied has been examined by prosecution. Medical evidence confirms forceful sexual intercourse, and therefore, she too resisted the relief.

5. After hearing both sides and on going through the record and papers, it is seen that, applicant was indicted for charges under sections 376(n) and 506 of IPC. Evidence of victim at Exh.41, *prima facie* shows that, she reported her age on the date of evidence as 19 years. She gave her date of birth as 02.01.2002. Her evidence shows that, she got acquainted with accused through her friend and after long association she claims that accused offered to marry her. Learned trial Judge seems to have acquitted applicant from charges under sections 363, 366-A, 376 (i), 506 read with section 34 of IPC and under sections 4, 6 and 17 of POCSO Act. In paragraph no. 7 of her evidence, he has alleged forceful sexual intercourse. However, before this court now theory of love affair and consent is advanced. Medical witness PW7 Dr. Naresh Rawlani opined about signs of forceful penetration of vagina and possibility of sexual intercourse cannot be ruled out. PW10 Geetabharti, teacher, who carried school record, gave date of birth as 02.01.2002. Victim seems to have left her own house on 08.10.2017. She has alleged forceful intercourse on 11.10.2017 and 12.10.2017. Going by such dates, *prima facie*, she is around 15 years of age. Therefore, there is *prima facie* incriminating material against applicant. Merely because, out of 10 years sentence, applicant has undergone 06 years imprisonment is itself no good ground to grant relief as prayed. Taking all above

discussed evidence and circumstances, nature of offence, this court does not find it a fit case for grant of relief. Hence, I proceed to pass following order :-

ORDER

- (i) The criminal application stands rejected.

(ABHAY S. WAGHWASE, J.)